

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THERESA MALONE, individually and as)
shareholders of and on behalf of Blue)
Valley Foods, Inc., a Nebraska corporation,)
LEE PRESTON, individually and as)
shareholders of and on behalf of Blue)
Valley Foods, Inc., a Nebraska corporation,)
JULIE O'NEAL, individually and as)
shareholders of and on behalf of Blue)
Valley Foods, Inc., a Nebraska corporation,)
TERRY MITCHELL, individually and as)
shareholders of and on behalf of Blue)
Valley Foods, Inc., a Nebraska corporation,)
and TERESA WATSON, individually and)
as shareholders of and on behalf of Blue)
Valley Foods, Inc., a Nebraska corporation,)

Plaintiffs,)

v.)

KANTNER INGREDIENTS, INC.,)
KANTNER REAL ESTATE, LLC,)
KANTNER CUSTOM DAIRY, LLC,)
CHIANTI CHEESE OF NEW JERSEY,)
INC., GERBER (CALIFORNIA), INC.,)
INGREDIA, INC., TOTAL)
SWEETENERS, INC., DOUGLAS)
KANTNER, KANTNER GROUP, INC.,)
CUSTOM DAIRY PRODUCTS, LLC, and)
KEVIN RUTTER, acting in his official)
capacity as Director of Blue Valley Foods,)
Inc.,)

Defendants.)

4:12CV3190

MEMORANDUM AND ORDER ON
PLAINTIFFS' MOTIONS TO DISMISS

On November 1, 2012, the plaintiffs, Theresa Malone, Lee Preston, Julie O'Neal, Terry Mitchell, and Teresa Watson, filed a "Motion to Dismiss Without Prejudice." (ECF No. 36.) The

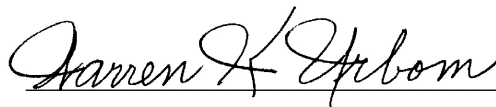
motion states, “Come now the Plaintiffs, Theresa Malone, et al., and file this Motion to Dismiss without Prejudice for all claims against Defendants Total Sweeteners, Inc. and Gerber (California) Inc.” (*Id.* at 1 (emphasis omitted).) On November 29, 2012, the plaintiffs filed a second “Motion to Dismiss Without Prejudice” that states, “Come now the Plaintiffs, Theresa Malone et al., and file this Motion to Dismiss without Prejudice for all claims against Defendant Ingredia, Inc. (a/k/a International Dairy Ingredients, Inc. or IDI, inc.).” (Mot. at 1, ECF No. 51 (emphasis omitted).) No defendants have filed a response to either motion.

I construe the plaintiffs’ motions to be notices of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i). This rule states that, subject to certain exceptions, “the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). It appears that the plaintiffs filed their motions to dismiss before the aforementioned defendants served either an answer or a motion for summary judgment, and no party has suggested that the motions should be denied. Ordinarily, the plaintiffs’ voluntary dismissals would be effective without a court order under these circumstances. Because the plaintiffs filed motions to dismiss rather than notices of dismissal, however, it seems to me that I should enter an order clarifying that the plaintiffs’ claims against Total Sweeteners, Inc., Gerber (California) Inc., and Ingredia, Inc. are dismissed without prejudice.

IT IS ORDERED that the plaintiffs’ motions to dismiss, (ECF Nos. 36 and 51), are granted, and all of the plaintiffs’ claims against Total Sweeteners, Inc., Gerber (California) Inc., and Ingredia, Inc. are dismissed without prejudice.

Dated January 7, 2013.

BY THE COURT



Warren K. Urbom
United States Senior District Judge